

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: April 11, 1991

FAA Order No. 91-11

In the Matters of:)
CONTINENTAL AIRLINES)
_____)

Docket Nos. CP89SW0038
CP89EA0049
CP89EA0034
CP89SW0046

ORDER

The matter before me as a result of Respondent's motions to vacate illustrates the growing pains that, perhaps, are inevitable with a new program and a new set of procedural rules to implement that program. Here, Respondent complains that the law judge has gone beyond his legal authority by entering default judgments when the Rules of Practice, 14 C.F.R. Part 13, do not provide for default judgments. At the same time, Respondent filed a motion to vacate the default judgments when such a motion is likewise not provided for in the Rules of Practice.

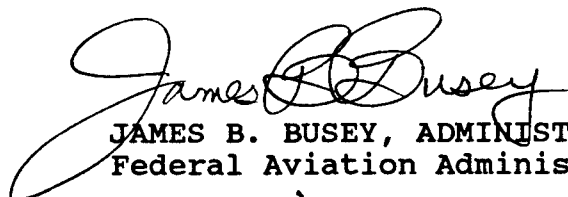
It is unclear exactly why Respondent elected to file this motion rather than to simply prepare and file an appeal brief as provided for in Section 13.233(c).^{1/} It is also unclear why Complainant's counsel moved for judgment^{2/} in his

^{1/} Respondent did file a timely Notice of Appeal the day before its Motion to Vacate and Remand was filed.

^{2/} It is noteworthy that counsel did not specifically label his motion as a motion for default judgment, but it seems that is what was intended.

opposition to Respondent's motion for continuance of the hearing dates. Finally, it is also unclear why the law judge granted the default judgments rather than to deny the Respondent's motion, convene the hearing as originally scheduled,^{3/} and put Respondent to the test of appearing at the hearing and defending the cases.

THEREFORE, in consideration of the above, and as a means of bringing this matter back within the confines of the Rules of Practice, Respondent's motions to vacate the default judgments and to remand for a hearing will be treated as appeal briefs in the above-captioned cases, and Complainant is hereby ordered to respond to those briefs within 35 days of this Order. Complainant's requests for additional time to respond to Respondent's motions are denied as moot.


JAMES B. BUSEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 10th day of April, 1991.

^{3/} This is not to say that I hold any view on whether the law judge should or should not have continued the hearing dates. I have no doubt that the law judge considered more factors than appear in the record. However, I am dismayed that counsel cannot more readily accommodate their respective schedule conflicts.